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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/745,023	12/20/2000	Ram Kudukoli	5150-44100	8133
35690	7590	10/23/2006		
MEYERTONS, HOOD, KIVLIN, KOWERT & GOETZEL, P.C. 700 LAVACA, SUITE 800 AUSTIN, TX 78701			EXAMINER KANG, INSUN	
			ART UNIT 2193	PAPER NUMBER

DATE MAILED: 10/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/745,023

Applicant(s)

KUDUKOLI ET AL.

Examiner

Insun Kang

Art Unit

2193

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 7/3/2006 and 1/17/2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 65-145 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 65-145 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>9/2/2005</u> . | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. This action is in response to the Appeal Brief filed 1/17/2006.
2. In view of the appeal brief filed on 1/17/2006, prosecution is hereby reopened. New grounds of rejection are introduced below. To avoid abandonment of the application, appellant must exercise one of the following two options:
  - (1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or, (2) request reinstatement of the appeal. If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted.

The previous office action has been withdrawn. Claims 65-145 are pending in the application.

### ***Double Patenting***

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Art Unit: 2193

4. Claims 65-145 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-42 of U.S. Patent No. 7,120,876.

Although the conflicting claims are not identical, they are not patentably distinct from each other because they are directed to substantially the same invention and recites only obvious differences which would have been obvious to one of ordinary skill in the art of program development at the time of invention such as simply (i) omitting/adding steps or elements along with their functions, and/or (ii) implementing the method steps with means for performing the steps, and/or (iii) computer program implementation of the method, and/or (iv) implementing a system, product, or medium etc having computer program for performing the method steps.

The following example is given:

Per claim 65:

Patent '876 claims automatically generating a graphical program comprising ...a plurality of interconnected nodes that visually indicate the functionality of the program ...wherein said automatically generating is performed without direct user input specifying the program (Claim 1, programmatically generating a graphical program...a plurality of interconnected nodes, without direct user input specifying the nodes).

5. Claims 65-145 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-69 of U.S. Patent No. 7,000,190.

Although the conflicting claims are not identical, they are not patentably distinct from each other because they are directed to substantially the same invention and recites only obvious differences which would have been obvious to one of ordinary skill in the art of program development at the time of invention such as simply (i) omitting/adding steps or elements along with their functions, and/or (ii) implementing the method steps with means for performing the steps, and/or (iii) computer program implementation of the method, and/or (iv) implementing a system, product, or medium etc having computer program for performing the method steps.

The following example is given:

Per claim 65:

Patent '190 claims automatically generating a graphical program comprising ... a plurality of interconnected nodes that visually indicate the functionality of the program ... wherein said automatically generating is performed without direct user input specifying the program (Claim 1, automatically modifying a graphical program, receiving information, a plurality of interconnected nodes, without any user input specifying).

6. Claims 65-145 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims of 1-37, 39-59, 61-74, and 76-90 of copending U.S. Patent application No. 09/595003. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are directed to substantially the same invention and recites only

Art Unit: 2193

obvious differences which would have been obvious to one of ordinary skill in the art of program development at the time of invention such as simply (i) omitting/adding steps or elements along with their functions, and/or (ii) implementing the method steps with means for performing the steps, and/or (iii) computer program implementation of the method, and/or (iv) implementing a system, product, or medium etc having computer program for performing the method steps. '003 is a non-published application, therefore, the specific claim languages are not stated at this time.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

7. Claims 65-145 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 285-381 of copending U.S. Patent application No. 09/518,492. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are directed to substantially the same invention and recites only obvious differences which would have been obvious to one of ordinary skill in the art of program development at the time of invention such as simply (i) omitting/adding steps or elements along with their functions, and/or (ii) implementing the method steps with means for performing the steps, and/or (iii) computer program implementation of the method, and/or (iv) implementing a system, product, or medium etc having computer program for

Art Unit: 2193

performing the method steps. '492 is a non-published application, therefore, the specific claim languages are not stated at this time.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

8. Claims 65-145 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 3-6, 8, 12-23, 25, 26, 28, 29, and 31-54 of copending U.S. Patent application No. 09/747,091. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are directed to substantially the same invention and recites only obvious differences which would have been obvious to one of ordinary skill in the art of program development at the time of invention such as simply (i) omitting/adding steps or elements along with their functions, and/or (ii) implementing the method steps with means for performing the steps, and/or (iii) computer program implementation of the method, and/or (iv) implementing a system, product, or medium etc having computer program for performing the method steps.

The following example is given:

Per claim 74:

Patent '091 claims automatically generating a graphical program, a state diagram ... a plurality of interconnected nodes that visually indicate the functionality of the program ... wherein said automatically generating is performed without direct user input specifying the program (Claim 1, programmatically generating a graphical

Art Unit: 2193

program...a state diagram, a plurality of interconnected nodes, without direct user input specifying the nodes).

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Insun Kang whose telephone number is 571-272-3724. The examiner can normally be reached on M-R 6:30-5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kakali Chaki can be reached on 571-272-3719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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